

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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CARY S. PERGANDE,

Plaintiff,

v.

Case No. 06-C-404

FOUR POINTS SHERATON HOTEL,

Defendant.

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**ORDER**

On March 27, 2006, *pro se* plaintiff Cary S. Pergande ("Pergande") filed a complaint alleging that defendant Four Points Sheraton Hotel terminated the plaintiff's employment based upon the plaintiff's disability in violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.* Pergande also filed a motion for leave to proceed *in forma pauperis*.

The court denies the plaintiff's motion for leave to proceed *in forma pauperis*. The federal *in forma pauperis* statute, 28 U.S.C. § 1915, is designed to ensure indigent litigants meaningful access to the federal courts. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). To authorize a litigant to proceed *in forma pauperis*, the court must first determine that the litigant is unable to pay the costs of commencing the action. 28 U.S.C. § 1915(a). Second, the court must determine that the action is neither frivolous nor malicious, does not fail to state a claim, and does not seek money damages against a defendant immune from such relief. 28 U.S.C. § 1915(e)(2). In making the latter determination, the court must give a *pro se*

plaintiff's allegations, "however inartfully pleaded," a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

The court is unable to conclude that the plaintiff is unable to pay the costs of commencing this action. The plaintiff submitted a petition and affidavit to proceed without prepayment of fees, but the plaintiff did not sign or date the petition and affidavit. Within twenty days of the date of this order, the plaintiff may submit an amended petition and affidavit or pay the \$250 filing fee. If the plaintiff fails to take either of these actions, the court will dismiss this action without prejudice.

Accordingly,

**IT IS ORDERED** that the plaintiff's motion for leave to proceed *in forma pauperis* be and the same is hereby **DENIED**; within twenty days of the date of this order, the plaintiff may submit an amended petition and affidavit or pay the \$250 filing fee. If the plaintiff fails to take either of these actions, the court will dismiss this action without prejudice.

Dated at Milwaukee, Wisconsin, this 19th day of April, 2006.

BY THE COURT:

s/J.P. Stadtmueller  
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J.P. STADTMUELLER  
U.S. District Judge